

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: TFT-LCD (FLAT PANEL) ANTITRUST
LITIGATION

No. M 07-1827 SI
MDL. No. 1827

No. C 10-01064

This Order Relates to:

**ORDER DENYING DEFENDANTS'
OBJECTION TO SPECIAL MASTER'S
ORDER DENYING LEAVE TO
DISCLOSE ANTHONY NANNI AS
EXPERT WITNESS IN THE DELL CASE**

DELL INC. and DELL PRODUCTS L.P.,

Plaintiffs,

Y.

SHARP CORPORATION, et. al.,

Defendants.

The Hannstar Display Defendants, on behalf of all Defendants in the Dell case (collectively, “Defendants”), have filed an objection to the Special Master’s Order denying their request for leave to disclose Anthony V. Nanni as an expert. *See* Special Master’s Further Amended Order Re Defendants’ Motion for Leave to Disclose Anthony Nanni as Expert Witness in the Dell and Best Buy Cases, Master Docket No. 5371 (April 4, 2012). Pursuant to Local Rule 7-1(b), the Court finds this matter suitable for decision without oral argument and therefore VACATES the hearing currently scheduled for May 4, 2012. Having considered the arguments presented in the moving papers, the Court hereby DENIES Defendants’ objection.

The Special Master’s Order concerned Defendants’ request for leave to disclose Mr. Nanni as an expert witness in the Dell case after the court-ordered deadline. Finding that “defendants have not demonstrated that their late designation of Nanni was ‘substantially justified’ or ‘harmless,’ or that they have ‘good cause’ for a two-to-four month delay in complying with the Court’s pre-trial schedule,” the

1 Special Master denied Defendants' request. Order at 5; *see also* Fed. R. Civ. P. 37(c)(1) (barring a party
2 from presenting a late-disclosed witness unless "the failure was substantially justified or harmless.").
3 Defendants object to the Special Master's Order.

4 The question of whether a party has shown "good cause" for deviating from a court-imposed
5 pretrial schedule is a procedural matter that this Court reviews for abuse of discretion. *See* Order
6 Appointing Martin Quinn as Special Master, Master Docket No. 1679 (April 12, 2010) at ¶ 18; Fed. R.
7 Civ. P. 53(f)(3)-(5). Courts are given "particularly wide latitude" in determining whether to issue
8 sanctions under Rule 37. *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir.
9 2001).

10 The Court agrees with the reasoning set forth in the Special Master's Order and therefore adopts
11 the Order in its entirety. Defendants' justification for their 90-day delay in disclosing Mr. Nanni does
12 not amount to good cause under the July 2011 scheduling Order. Nor have Defendants convinced the
13 Court that such delay was "substantially justified or harmless" under Federal Rule of Civil Procedure
14 37(c)(1). *See Goodman v. Staples The Office Superstore, LLC*, 644 F.3d 817, 826 (9th Cir. 2011)
15 ("[w]hen a party fails to make the disclosures required by Rule 26(a), the party is not allowed to use the
16 [information or witness] . . . at trial unless it establishes that the failure was substantially justified or is
17 harmless.").

18 Accordingly, the Court DENIES Defendants' objection to the Special Master's Order. Docket
19 No. 5273, 5389 in M 07-1827; Docket No. 193 in 10-1064.

20 **IT IS SO ORDERED.**

21
22 Dated: May 2, 2012


23 SUSAN ILLSTON
24 United States District Judge

25
26
27
28